SERVED: May 7, 2003

NTSB Order No. EA-5037

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 1st day of May, 2003

MARION C. BLAKEY, Administrator, Federal Aviation Administration, Complainant, v. ALLEN ADILI, Respondent.	Docket SE-16553

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge William A. Pope, II, issued on October 9, 2002, following an evidentiary hearing.[1] The law judge affirmed an order of the Administrator, on finding that respondent had violated 14 C.F.R. 43.13(a) of the Federal

[1] The initial decision, an excerpt from the transcript, is attached.

Aviation Regulations (FARs).[2] We deny the appeal.

Respondent is the "Chief Inspector" and part owner with others of his family of Air Sunshine, a Part 135 carrier with, as relevant here, operations out of Ft. Lauderdale, Florida. He has a mechanic's certificate. The Administrator here contends that respondent performed the July 27, 1999 changing of a flat tire on a Cessna 402 without performing the required gear retraction test. Respondent claimed that, first, he had not done the work, but had only signed off on it, and, second, that a gear retraction test had actually been done before the aircraft was returned to service.

The law judge, having heard numerous witnesses, concluded that respondent's version of events was not credible, and that respondent's testimony was "deceitful." Tr. at 441. Two FAA inspectors testified, and the law judge found as a matter of fact, that when the FAA inspectors inquired of respondent and his mechanic employee (Alex Carmona) as to the proper performance of a tire change, Mr. Carmona, in respondent's hearing, expressed puzzlement and unfamiliarity with the need to do a gear retraction test.

Contemporaneous with the event, according to an FAA witness, Air Sunshine provided the FAA with documents signed by respondent that indicated the tire had been changed and the system bled but

[2] Section 43.13(a) generally provides, as pertinent here, that individuals performing aircraft maintenance shall do so in accordance with the aircraft's manual.

with no reference to any gear retraction test, and that 2.2 engine hours later (after the aircraft had been returned to service and flown to the Bahamas and back), a gear retraction test had been performed.

Respondent and Mr. Carmona testified that Mr. Carmona and an assistant (not respondent) had done all the work, including the gear retraction test, and that the paperwork was intended to indicate respondent only signed off on the work. Respondent offered other versions of documents introduced by the Administrator –- versions with different aircraft hours on them -– intending to show that the test had been done before the aircraft had been flown to the Bahamas, and that it had been done by Mr. Carmona. Respondent also testified that he did another gear retraction test after the aircraft returned, not because it needed to be done but because the FAA had so directed (why, he did not know).

The law judge was faced with conflicting versions of events and different sets of documents. He was obliged to determine who and which he believed, and as noted above, he found the Administrator's witnesses more credible. He specifically rejected both respondent's and Mr. Carmona's testimony as to who did the work and when. And, he concluded that the failure to reference the landing gear retraction test (as bleeding the system was referenced) was crucial evidence that the test had not been done when the flat tire was fixed. Respondent does not challenge these or any other of the law judge's credibility

determinations, and we see no basis to overturn them.

Respondent argues, however, that the Administrator was required to prove that respondent actually performed all the work, if we are to sustain a violation of § 43.13(a). He argues that respondent's sign-off on the pilot log (Exhibit A-4) is not evidence that respondent did the work and does not satisfy the evidentiary requirement of § 43.13(a), and that the law judge's findings of fact were not adequate to support the charge.

Initially, we note that respondent did not just sign off on the pilot log. There are three documents that indicate he performed work on the aircraft. Exhibit A-4 contains the entry "Replaced left tire Bleed [sic] the system." The entry is signed "A. Adili A&P 267379982." Exhibit A-5, the same form, but with information added 2.2 aircraft hours later, says "gear retraction was satisfactory" and is again signed "A. Adili A&P 267379982." Exhibit A-1, the aircraft discrepancy report form, indicates that a retraction test was performed "I/A/W"[3] and that the discrepancy was corrected by A. Adili on July 27, 1999.

The law judge rejected respondent's and Mr. Carmona's testimony that Mr. Carmona did the work, finding that it was a deceitful effort to shift the blame onto Mr. Carmona. Tr. at 441. The law judge noted that it is routine and required for the person who performs the work to sign that he has done so. Id. The totality of the law judge's opinion makes clear that he

[3] Which, Mr. Adili testified, meant "according to the manual."

believed respondent actually performed work on the aircraft and was signing in his mechanic capacity. The law judge then went on to say that even if respondent had not done all the work, but had had help from Mr. Carmona, respondent remained responsible. This finding is supported by our holding in Administrator v. Sanders, 2 NTSB 1386 (1975), which is directly on point. In that case, respondent was charged with violating § 43.13(a). We stated: "respondent did not perform the work involved, [but] he signed as mechanic and is, therefore, held accountable for the work and the manner of its performance." Id. at 1388. In essence, he is held to have performed the work and to stand in the shoes of the person who did the work.[4]

[4] Respondent argues that it was the pilot, Mr. Moslemi, who actually returned the aircraft to service and judged it airworthy by signing in the log that he had completed a preflight inspection. This argument is specious and irrelevant. A pilot's preflight inspection does not substitute for maintenance properly performed, and pilots are entitled to rely on mechanics properly to perform work that is not obvious to the naked eye. In any case, the charge before us concerns maintenance performance, not inspection.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and

2. The 60-day suspension of respondent's mechanic certificate[5] shall begin 30 days after the service date indicated on this opinion and order.[6]

ENGLEMAN, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.

[5] Respondent also claims it was error to suspend his powerplant certificate because no powerplant matters were involved. But respondent does not have a powerplant certificate. There is no such thing. He has an airframe and powerplant rating for his mechanic certificate, and it was his mechanic certificate that the Administrator sought to suspend.

[6] For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).